

LAW LIBRARY

ARIZONA ATTORNEY GENERAL

January 1954
Opinion No. 54-10

TO: The Honorable William A. Sullivan
Arizona State Senate
Capitol Building,
Phoenix, Arizona

RE: Reregistration of voters for municipal elections.

QUESTION: Are cities and towns having an ordinance providing the method and time for registration of voters required, under Section 55-202, A.C.A., 1939, as amended, to reregister voters for municipal elections?

The power to provide for the orderly exercise of the right of suffrage belongs to the Legislature and, included therein, is the power to enact registry laws. By enactment of Section 16-901 A.C.A., 1939 which permits municipalities to provide by ordinance for the registration of voters of any city or town, the Legislature has delegated a portion of its power and authority over registration laws.

Section 16-901, supra, first enacted in 1901, reads in part as follows:

"16-901. Registration for regular or special elections.--Any city or town may by ordinance, or resolution in writing, provide for and require a registration of the voters of said city or town. Such registration may be made anew every two (2) years, and shall begin within sixty (60) days before, and be closed ten (10) days before the regular city or town election. Such registration shall show: The name in full of each registered voter; the sex of the voter, and that he is twenty-one (21) years of age or over; place of nativity; his place of residence by street and number, or by ward; if not a native of the United States, the time and place of naturalization; whether on the tax roll

of said city or town, or not, and the date of the entry on the register.

The voter may change his place of residence as recorded on said register up to the time of closing same. No person shall vote at any election in any ward except the one in which he shall have lived for ten (10) days next preceding such election and as shown on said register. In special elections wherein the question of issuing the bonds of such municipal corporation is submitted to the qualified electors thereof, who are the owners of real or personal property subject to taxation within such municipal corporation, the mayor and common council of such municipal corporation may, by resolution require a registration of all persons to vote at such special elections, who possess such qualifications; such resolution shall be passed at least thirty (30) days prior to the holding of such election, and the registration shall begin at least thirty (30) days before and close ten (10) days prior to the holding of such election, and no person shall be permitted to vote at any such special election unless the real or personal property of the person offering to vote which is subject to taxation within such municipal corporation, shall appear in the last assessment or tax roll of such municipal corporation, and the assessor or tax collector of such municipal corporation shall enter in the assessment or tax roll of such municipal corporation the property of persons owning property subject to taxation within such municipal corporation, at any time prior to the day on which such election is held, upon the application of such persons." (Emphasis supplied)

In addition, Section 16-902, A.C.A. 1939 provides:

"16-902. Qualifications of voters.-- No person shall be entitled to vote at any election in any city or town, who is not qualified to register and vote at elections of county officers, and who shall not also have resided in such city or town for six (6) months preceding such election."

Consequently, it seems clear, in view of the last quoted statute, to entitle one to vote in a city election the person must meet the qualifications set forth in Section 55-201 A. C. A. 1939 as amended, in addition to being a resident of the city for a period of six months prior to an election.

The delegation of authority to municipalities to provide for the registration of voters of the city was modified to some extent in 1935 by Section 55-220 A. C. A., 1939. This law, in part, prescribes:

"55-220. Provisions of act applicable to incorporated cities and towns.--The provisions of this act, except as to the registration of absent electors, are hereby made applicable to cities and towns incorporated under the provisions of articles 1 and 2, chapter 12, Revised Code of 1928 (SS 16-101--16-116, 16-201--16-231), and except as to the registration of such absent electors the duties imposed upon the county recorder of each county are hereby imposed upon the city or town clerk of every such incorporated city or town. * * *"

Article 1, Chapter 12, Revised Code of 1928 relates to those cities incorporated under a board of trustees while Article 2, supra, pertains to cities and towns incorporated under common council government.

Therefore, any city or town within the State of Arizona may, if it chooses, provide by ordinance for the registration of voters within the city or town. This permission was re-expressed in 1953 in Section 55-202, A. C. A. 1939, as amended, which reads in part:

"55-202. Registration by county recorder and justices of the peace.-- * * * The registration of electors required by the charter or ordinances of any city or town are not precluded hereby. * * *"

Although the intention of the Legislature as expressed in these terms is somewhat ambiguous, it seems that in the light of the history of all the registration statutes and other laws in pari materia, the intention of the sentence of Section 55-202 supra, was to give continued authority to all cities and towns to enact ordinances pertaining to the registration of electors. However, any ordinance enacted by a city incorporated under a board of trustees or incorporated under a common council is subject to the provisions of Chapter 55

A. C. A. 1939 as amended, namely the general state laws relating to elections and suffrage.

Therefore, all cities incorporated under a board of trustees and all those incorporated under a common council are required to reregister for municipal elections since Section 55-220, supra, made all laws under Chapter 55, supra, applicable to those types of cities and because Section 55-202, supra, has declared all registration of electors made prior to January 1, 1954 to be invalid on and after January 1, 1954.

We now come to the question of those remaining cities not incorporated under a board of trustees or common council but which have chosen to enact ordinances providing for and requiring the registration of voters on separate lists than those provided for in Chapter 55, supra. Of course, included in this group may be a number of the larger cities within the state which are incorporated under a charter government. Relative to these cities, the Legislature has nowhere mandated that the general suffrage and election laws of the State should be made applicable to the registration of city electors. To the contrary, the Legislature has specifically excluded those cities from their operation.

As pointed out above, Section 16-901, supra, permitted all cities to enact ordinances for the registration of voters of the city. Later, in point of time, the Legislature under the provisions of Section 55-220, supra, mandated that the general suffrage laws were to be applicable only to cities incorporated under a board of trustees and incorporated under common council, thus excluding all other types of cities and towns.

The applicable principle involved is that of "expressio unius est exclusio alterius." This principle is well set forth in 40 Am Jur, Section 244 I.C. 238 in part as follows:

"§ 244. Expressio Unius Est Exclusio Alterius.--
* * * it is a general principle of interpretation that the mention of one thing implies the exclusion of another; expressio unius est exclusio alterius. The rule applies even though there are no negative words excluding the things not mentioned. Thus, a statute that directs a thing to be done in a particular manner, or by certain persons or entities, ordinarily implies that it shall not be done in any other manner, or by other persons or entities. * * *"

Under similar facts as are here present, the case of *People vs Worswick*, (1904), 142 Cal. 7175 Pacific 663, 1.c. 664, with regard to a city organized under a charter held in part:

"* * * the general laws of the state touching the registration of voters prior to state and county elections have no bearing on an election of city officers in a municipality governed by a freeholders' charter, except so far as they are adopted by the charter itself. It is conceded that the election here in question was a 'municipal affair,' and, of course, the city could have adopted any system of registry, or could have declined to have any at all. * * *"

Likewise the case of *State vs Thompson*, (1912 Wisconsin,) 137 N.W., 20, held explicitly:

"* * * The registration of voters for a municipal election is a municipal affair. * * *"

citing in accord *People vs Worswick*, supra.

In addition the court, in the case of *Fitzgerald vs City of Cleveland*, (1913 Ohio) 103, N. E., 512 faced with a kindred question with regard to a city incorporated under a charter used the following language:

"* * * It is clear upon reason and authority that municipal elections are and should be regarded as affairs relating to the municipality itself and, in the absence of fundamental limitations prohibiting, are things that may be provided for by the local government. This does not involve the loss by the state of its proper authority within the city.

It is true, as contended, that the state at large is interested in the purity of every election, municipal or otherwise, and is interested in making provisions fixing the qualifications of electors and for the preservation of the purity of the ballot effective throughout the state, but the state is likewise interested in the protection of every other right of the citizen and should and will throw around all of these rights every protection which can be afforded by the sovereign power. The state itself is interested in protecting the municipality in the exercise of every right and power granted to it by the Constitution. Every energy of the state, executive, legislative, and judicial, may be properly

invoked and will respond to the protection of such rights. But it does not follow from this that the state would or could interfere with the exercise of the powers of local self-government which the people of the state had conferred upon the municipality by their Constitution. The method of electing municipal officers would seem to be a matter peculiarly belonging to the municipality itself. The very idea of local self-government, the generating spirit which caused the adoption of what was called the home rule amendment to the Constitution, was the desire of the people to confer upon the cities of the state the authority to exercise this and kindred powers without any outside interference. * * *

The Arizona Supreme Court in the well defined case of *Strode vs Sullivan*, (1951.) 72 Ariz. 360, 236, Pac. 2nd 48, had under consideration the city election laws of a city incorporated under a charter government. Therein it was held:

"* * * In the case of *Mayor & Common Council of City of Prescott v. Randall*, 67 Ariz. 369, 196 P.2d 477, 478, there was under consideration the charter of the city of Prescott. In this case, we made a partial compilation of our cases construing city charters, and there said: 'The rule established in all of these cases is that a charter city is sovereign in all of its "municipal affairs" where the power * * * to be exercised has been specifically or by implication granted in its charter.' * * *

* * * * *

"Since the early case of *Yuma Gas, Light & Water Co. v. City of Yuma*, 1919, 20 Ariz. 153, 178 P. 26, down to and including the late cases of *City of Tucson v. Tucson Sunshine Climate Club*, 1945, 64 Ariz. 1, 164 P.2d 598; *Maxwell v. Fleming*, 1946, 64 Ariz. 125, 166 P. 2d 831; and *City of Tucson v. Arizona Alpha of Sigma Alpha Epsilon*, 1948, 67 Ariz. 330, 195 P.2d 562, this court has uniformly held that a city charter, when regularly adopted and approved, becomes the organic law of the city and the provisions of the charter supersede all laws of the state in conflict with such charter provisions insofar as such laws relate to purely municipal affairs.* * *" (Emphasis supplied).

* * * * *

"As heretofore pointed out, the question of what election laws apply in the city of Phoenix has received the consideration of this court in the case of Maxwell v. Fleming, supra. The general principles stated therein are applicable in the instant case although the particular question presented here is a matter of first impression. Municipal elections may be, and usually are, provided for and regulated by the charters of the so-called homerule, free holder or constitutional charters. See McQuillin, Municipal Corporations 3rd Ed., Vol. 3, p. 52. Municipal elections and the choice of municipal officers have been held to be matters of local concern under charters similar to that of the city of Phoenix. * * *

* * * * *

"For cases from other jurisdictions holding in effect that city elections in charter or home rule cities are a matter of local interest and concern and governed by charter provisions rather than the general laws of the state, see Curtis v. Tillamook City, 88 Or. 443, 171 P. 574, 172 P. 122; State ex rel. Stone v Andersen, 110 Or. 1, 222 P. 585; Lail v. People ex rel. Osgood, 75 Colo. 459, 226 P. 300; State ex rel. Hackley v. Edmonds, 1948, 150 Ohio St. 203, 80 N. E. 2d 769; People ex rel. Martin v. Worswick, 142 Cal. 71, 75 P. 663.

The framers of the Constitution, in authorizing a qualified city to frame a charter for its own government, certainly contemplated the need for officers and the necessity of a procedure for their selection. These are essentials which are confronted at the very inception of any undertaking looking toward the preparation of a governmental structure. We can conceive of no essentials more inherently of local interest or concern to the electors of a city than who shall be its governing officers and how they shall be selected. * * *

* * * * *

" * * * We therefore specifically hold that the method and manner of conducting elections in the city of Phoenix is peculiarly the subject of local interest and is not a matter of statewide concern. * * *

The Honorable William A. Sullivan
Arizona State Senate

January 22, 1954
Page Eight

It is our considered opinion therefore, in view of the cases, principles and statutes outlined above, that all cities incorporated under a board of trustees and those incorporated under a common council which have enacted ordinances for the separate registration of city electors are required, under the provisions of Section 55-220, supra, and Section 55-202, supra, to reregister such electors. It is our further opinion that all other cities which have enacted similar ordinances for separate registration for city electors need not reregister such electors since such matters are of local concern and are not governed beyond provisions of Section 55-202, supra.

Yours very truly,

ROSS F. JONES
The Attorney General

WTB: jlb

WILLIAM T. BIRMINGHAM
Assistant to the
Attorney General